



June 7, 2024

Honorable Ann Aiken
405 East Eighth Avenue
Eugene, OR 97401

**Re: *Wyatt B. v. Kotek*, No. 6:19-cv-00556-AA,
Plaintiffs' Nomination of Kevin Ryan for Settlement Neutral**

Dear Judge Aiken,

Plaintiffs submit this memorandum in support of our nomination of Kevin Ryan to serve as the neutral in this case as defined in Section 3 of the Settlement Agreement (the "SA"). The Parties have conferred in good faith to jointly select the neutral, as required by Section 4.2.1, but have been unable to reach agreement. After careful and thoughtful consideration of Defendants' candidates, including several interviews, Plaintiffs firmly believe that Mr. Ryan is the most qualified candidate for this role. Therefore, pursuant to Section 4.2.2, Plaintiffs nominate Kevin Ryan for the reasons set forth below.

Qualifications

With over sixteen years of established monitoring experience in child welfare reform, Mr. Ryan is uniquely qualified to serve as the neutral in this case. He has been appointed as a neutral by U.S. District Court judges in Florida, Michigan, Oklahoma, and Texas, and he serves as a neutral in New Mexico by agreement of the parties. Mr. Ryan has a deep, comprehensive understanding of how child welfare systems operate, and critically, of what works and doesn't work in reforming systems. Through his work he remains knowledgeable on current national child welfare best practices. In addition to having extensive experience with unique child welfare systems, Mr. Ryan also has familiarity with the federal government oversight process, including the CFSR process.

Mr. Ryan first became involved with child welfare issues in January 2002 when he served as the Deputy in the Office of Management and Operations in the Office of the Governor of New Jersey. He went on to serve as New Jersey's first Child Advocate, founding and leading the public watchdog agency, and dealing with government agencies that serve children, including child welfare, juvenile justice, and disability services. Mr. Ryan then became the Commissioner of Human Services in New Jersey, where he oversaw the separation of the agency into two parts and created the Department of Children and Families, a cabinet-level agency, which he headed from 2006 to 2008. Mr. Ryan's work re-organizing a seriously dysfunctional system in New Jersey laid the foundation what has now become one of the best child welfare systems in the country, as attested to by one of Defendants' proposed trial witnesses in this case.



Since his time as the head of the New Jersey child welfare system, which ended in 2008, Mr. Ryan has only accepted positions in which he is either appointed by a federal court or in which he has been asked to serve by both parties to the litigation.

Other Neutral Appointments

Section 4.2.3 of the Settlement Agreement requires that the party proposing a candidate to the court must describe “each instance in which the nominee has served as an expert, consultant or monitor in any action involving the Parties or their counsel and listing references from those engagements.”

Plaintiffs’ counsel at A Better Childhood, Marcia Lowry,¹ has been involved in cases where Mr. Ryan served as a neutral in Michigan, Oklahoma, Texas, and Mississippi. In the majority of those cases Mr. Ryan has been appointed by the federal court, and in three instances at the initial request of state defendants.

Although Mr. Ryan was appointed by the court in the *Dwayne B. v. Snyder*² case in Michigan while Ms. Lowry was the executive director of Children’s Right, she was not involved in the case after it was settled. Mr. Ryan was first approached to serve a role in that case by representatives from the Michigan Governor’s Office, and Ms. Lowry agreed to his participation.

Mr. Ryan was appointed by the court in Oklahoma in *D.G. v. Yarbrough*.³ Ms. Lowry, along with local counsel, represents the plaintiffs in that case. The parties in Oklahoma worked collaboratively and effectively to achieve the goals of the settlement agreement, and the state will be likely be released from court jurisdiction shortly. Mr. Ryan was first approached to serve as a mediator in the case by a State Defendant, and Ms. Lowry agreed to his participation. Plaintiffs have attached several of the co-neutral reports produced by Mr. Ryan in Oklahoma so the Court may review and assess the depth and quality of his work.⁴ The Oklahoma reports document the collaborative role Mr. Ryan has played in both monitoring the system and, equally importantly, in helping the Oklahoma system come into compliance with its settlement agreement. The Oklahoma case was settled in January 2012. In the twelve years since, Mr. Ryan has worked closely with the state to transform the Oklahoma system from one in which infants were routinely housed in over-crowded shelters, into one that conforms with current child welfare best practices.

¹ Ms. Lowry was previously executive director at Children’s Rights, another child welfare advocacy organization. The cases in Mississippi, Texas, and Michigan were filed while Ms. Lowry was the executive director of Children’s Rights.

² *Dwayne B. v. Whitmer*, No. 2:06-CV-13548 (E.D. Mich. filed August 2006).

³ *D.G. v. Yarbrough*, Case No. 4:08-CV-00074 (N.D. Okla. filed Feb. 2008).

⁴ Attached hereto as Exhibit 1 is the *D.G. v. Yarbrough* Co-Neutral 19th Commentary, dated March 2023; attached hereto as Exhibit 2 is the *D.G. v. Yarbrough* Co-Neutral 20th Commentary, dated September 2023; and attached hereto as Exhibit 3 is the *D.G. v. Yarbrough* Co-Neutral 21st Commentary, dated April 2024.



Mr. Ryan was also appointed as one of the two monitors in the Texas case, *M.D. v. Abbott*,⁵ in which Ms. Lowry is plaintiffs' counsel along with three other firms. Mr. Ryan was one of four candidates proposed to the court by plaintiffs' counsel, and he was ultimately selected by the court.

In Mississippi, *Olivia Y. v. Bryant*,⁶ Mr. Ryan's organization, Public Catalyst, is the monitor, brought into the case by defense counsel, Rusty Fortenberry. Mr. Ryan does not play an active, ongoing role in the Mississippi case. Mr. Ryan is also involved as a monitor in other child welfare lawsuits, in Florida and New Mexico, about which Ms. Lowry has no knowledge or involvement. He was recently appointed by the chief judge of the Southern District of California to adjudicate disputes between the government and child advocates involving migrant and refugee children's eligibility for the benefits of the *Miss L.* consent decree.

Because Mr. Ryan prioritizes his neutrality in these cases, he is not comfortable requesting references from the parties. He does, however, encourage the Court to contact the judges in the aforementioned cases. Mr. Ryan would be happy to facilitate those introductions, if helpful. Prior to finalizing the settlement agreement, Plaintiffs contacted Mr. Ryan about serving as a neutral in this case. After reviewing the term sheet, Mr. Ryan initially determined that he was unable to perform the task for the annual amount agreed upon by the Parties.⁷ Much of Mr. Ryan's work in other states involves comprehensive validation of data and practices, surveys into data accuracy, and substantial case record reviews of children's cases. Knowing the quality of Mr. Ryan's work, Plaintiffs engaged in further discussions with him regarding the scope of the neutral's role in Oregon. Plaintiffs assured Mr. Ryan that Oregon's data is largely accurate, and its quality assurance processes are reliable. Upon further consideration, Mr. Ryan determined that he was willing and able to take on this important opportunity to work collaboratively with Oregon to improve the state's child welfare system.

Defendants' Nominee

Plaintiffs do not believe that Defendants' nominee, Julie Farber, is appropriate to serve in this role because she has a current and ongoing working relationship with Oregon Child Welfare. Plaintiffs come to this conclusion after careful consideration of Ms. Farber's qualifications and experience, and after interviewing her.

Ms. Farber is a consultant to the Doris Duke Foundation, where she was responsible for choosing four sites to receive large grants to demonstrate and provide preventive services to families being diverted from foster care systems. Oregon was one of the sites selected on Ms. Farber's recommendation and she currently monitors the grant. Through her work at the Doris Duke Foundation, Ms. Farber is in frequent contact with Defendant Aprille Flint-Gerner and other

⁵ *M.D. v. Abbott*, No. 2:11-CV-00084 (S.D. Tex. filed Mar. 2011).

⁶ *Olivia Y. v. Reeves*, No. 3:04-CV-251 (S.D. Miss. filed Mar. 2004).

⁷ See SA Section 3.13.



high-level Child Welfare officials regarding their Family Preservation program. Ms. Farber made clear in her interview with Plaintiffs that she will continue overseeing the grant and its progress throughout her appointment as the neutral in this case. As the Court is aware, whether these same children, the children in the Family Preservation Program, are entitled to the protections of this settlement agreement is an issue currently being briefed by the Parties. Plaintiffs have serious concerns about Ms. Farber's ability to remain neutral in her work in this case while also continuing her close work with Oregon Child Welfare through the Doris Duke Foundation. To promote the unbiased, clear-eyed assessment of the child welfare system and collaborative process envisioned by the settlement agreement, the neutral should not serve in that role while simultaneously working closely with Child Welfare leadership in other capacities.

Thank you for your thoughtful consideration of the Parties' submission of these expert professionals who will do the critical work of overseeing this landmark settlement agreement over the next ten to twelve years.

Sincerely,

A BETTER CHILDHOOD

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